

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, May 20, 2011
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto, Chair
Honorable Michael J. Burke
Honorable James Conlogue
Honorable Robert Duber II
Honorable Sue Hall
Mr. Joshua Halversen
Honorable Charles V. Harrington
Honorable Carey S. Hyatt
William G. Klain, Esq.

Honorable Kenneth Lee – *telephonic*
Honorable David Mackey
Honorable Colleen McNally
Honorable Patricia Noland – *telephonic*
Mr. Marcus Reinkensmeyer
Honorable Michala Ruechel – *telephonic*
Honorable Monica Stauffer – *telephonic*
Honorable Randall Warner

MEMBERS ABSENT:

Honorable Eddward Ballinger
Honorable Michael J. Cruikshank
Mr. Tim Hardy

Honorable Stephen F. McCarville
Honorable Margaret Maxwell
Ms. Susan Wilson

PRESENTERS/GUESTS:

Mr. Jerry Landau, AOC
Steve D. Wolfson, Esq.
Ms. Melinda Hardman, AOC
Mr. Stewart Bruner, AOC
Peter Kozinets, Esq.
Mr. Cliff Ford, AOC
Mr. Mark Stodola, AOC

Ms. Janet Johnson, AOC
Ms. Kathy Sekardi, AOC
Ms. Theresa Barrett, AOC
Mr. Paul Julien, AOC
Ms. Jennifer Greene, AOC
Mr. Patrick Scott, AOC
Ms. Amy Love, AOC

STAFF:

Ms. Kay Radwanski, AOC

Ms. Julie Graber, AOC
Ms. Tama Reily, AOC

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the May 20, 2011, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:06 a.m.

Judge Soto announced that the symposium entitled “Connecting the Dots, Domestic Violence – Child Welfare: One State, One System,” is scheduled for September 9, 2011, from 8:30 a.m. to 4:30 p.m. at the Sandra Day O’Connor College of Law at Arizona State University in Tempe. Judge Soto noted that the seminar unfortunately conflicts with the next COSC meeting.

Judge Soto reviewed the remaining 2011 COSC meeting dates:

- Friday, September 9, 2011
- Friday, November 4, 2011

B. Approval of Minutes

The draft minutes from the February 4, 2011, meeting of the COSC were presented for approval.

MOTION: To approve the February 4, 2011, COSC meeting minutes as presented. Motion seconded. Approved unanimously.
COSC-11-017

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Mr. Jerry Landau, AOC government affairs director, reported on bills passed in the recently concluded legislative session. The effective date of the legislation is July 20, 2011. Mr. Landau also thanked members for their assistance and responsiveness during the session. The following bills were highlighted:

SB 1614: State budget procedures; 2011-2012

Makes changes to employee benefits, retirement eligibility for a new member to Arizona State Retirement Statutes (ASRS), and to the employee/employer contribution rate to ASRS from 50/50 to 53/47. The bill is effective July 20, 2011, with a retroactive date of July 1, 2011.

HB 2024: ASRS; amendments

Specifies additional changes to ASRS relating to administration, distribution of benefits, Long Term Disability (LTD), employer collections, return to work, service purchase and benefit transfers. The bill is effective July 20, 2011, with a retroactive date of July 1, 2011.

SB 1621: Budget reconciliation; criminal justice; 2011-2012

Mr. Landau reported that part of the bill on reimbursement agreements with county jails would be put off for a year as a compromise to address potential implementation pitfalls. The bill would require a county jail to enter into an agreement with the Arizona

Department of Corrections (ADC) to reimburse ADC's costs for the incarceration of a person sentenced to one year or less in the ADC. In the absence of an agreement, a person convicted of aggravated DUI, aggravated operation of watercraft/operation of aircraft, while under the influence, would be required to serve in jail.

HB 2064: Foreign law; conflict of laws

Prohibits the enforcement of foreign law if doing so would violate a federal or state constitutional right or conflict with federal or state law.

HB 2353: Sentencing; dangerous offenses; probation

Reverses special sentencing sections that were part of the 2008 sentencing reorganization by reinserting the sentencing provisions in the actual criminal offense. Adds code enforcement officers and park rangers to the aggravated assault statute.

SB 1212: Civil appeal bonds; limits

Restricts the amount of a bond that is necessary to stay execution during an appeal or discretionary review of a judgment in a civil action by an appellate court. Modifies interest rates on judgments and lowers the statutory medical malpractice interest rate.

HB 2406: Crimes; forensic interviews; mandatory fine

Requires a person convicted of a dangerous crime against children or sexual assault to pay an assessment of \$500 in addition to any other fine or restitution imposed, in order to pay for medical and/or forensic interview expenses required to investigate or secure evidence. Delayed effective date to January 1, 2012.

HB 2355: Court surcharges

Clarifies surcharges will be applied to the base fine and not to any other surcharge.

SB 1424: Assessment for family offenses; stalking

Requires a person convicted of aggravated harassment, stalking, and other violent family offenses to pay an assessment of \$50 in addition to any other fine imposed, in order to be used for shelters for domestic violence victims.

HB 2302: Protected address; secretary of state

Directs the Secretary of State (SOS) to establish the Address Confidentiality Program (ACP) by January 1, 2013, which will allow victims of domestic violence, sexual offenses, or stalking to keep their residential address confidential by giving them a substitute lawful address. Assesses \$50 to a person convicted of domestic violence, sexual offenses, or stalking, effective January 1, 2012. Mr. Landau reported that SOS will wait until the next legislative session to implement the program in order to spend more time working on it.

SB 1398: Moving violations; assessment; equipment; enforcement

Establishes a \$13 assessment for criminal offenses and civil penalties relating to violations of local motor vehicle ordinances and provides for the disposition of those monies. Repeals various state photo enforcement statutes. Amends requirements for

persons who have received a notice of violation from photo enforcement. This bill has a general effective date of July 20, 2011.

HB 2352: Court commissioner; qualifications

Removes the requirement that court commissioners complete three years of active practice before appointment so that the minimum qualifications of a superior court commissioner mirror those of a superior court judge.

SB 1167: Legislation; referenda challenges

Emergency measure that specifies filing timeframes and jurisdiction regarding legal challenges to legislative referenda. Effective date is April 18, 2011.

SB 1482: Appellate judges; judicial performance reviews

Requires the Commission on Judicial Performance to prepare and publish on its website a list of decisions that an appellate judge made, including the official citations and electronic copies of the decision, no later than 60 days prior to the primary election for the judge's retention. Questions were raised by the committee as to how to interpret the requirements of the bill, location in the code, as well as "primary election."

SB 1472: Publicity pamphlets; judicial performance; comment

Requires the Commission on Judicial Performance to prepare for electronic publication and file with the SOS, Supreme Court justices' and Court of Appeals judges' specified biographical information, and a listing of published decisions that declared a statute constitutional or unconstitutional, and the provisions of the Constitution relied upon, no later than 60 days before a regular primary election. This bill raised further concerns with the committee regarding the scope of the requirements, need for extensive tracking methods, and treatment of unpublished decisions in an electronic environment.

SB 1235: Law enforcement officers; disciplinary procedures

Modifies requirements related to officer disciplinary action and appeals. Prohibits a critical incident stress management team member from disclosing certain information except under specified circumstances. Applies the whistle blower statute to law enforcement officers of cities and towns. Mr. Landau pointed out that this is one of many bills that were introduced this session regarding law enforcement officers.

HB 2645: Firearms, rights restoration; peace officers

Modifies procedural aspects of statute regarding restoration rights for a mentally ill person to possess a firearm and includes a crime victim notification clause. Adds retired peace officers to the carrying of firearms by peace officers statute. Mr. Landau noted the absence of any proposed fee in connection with the rights restoration. Because the rights restoration is a civil action, a fee is applicable and should be attached.

B. Potential Legislation -- Child Custody Statutes, ARS § 25-401, *et seq.*

Mr. Steve D. Wolfson, family law attorney and co-chair of the Substantive Law/Court Procedures (SL/CP) Workgroup, Domestic Relations Committee (DRC), prepared an

introduction for COSC members about the proposed controversial redrafting of the child custody and visitation statutes, ARS §§ 25-401 to 25-415, which may be introduced in the legislature in January, 2012. Mr. Wolfson provided background into the statute revision that stemmed from a failed legislative push by a group to create a presumption of joint custody between separating and divorcing parents. A public policy statement was created as a compromise (§ 25-103), which reaffirmed core principles of a child's best interest. The Ad Hoc Custody Workgroup (AHCW) was tasked by DRC to perform a comprehensive review of the statutes and devise a system that was more user-friendly and that provided courts more guidance in cases with special circumstances. The result was a dramatically different product. The product incorporated the public policy statement into the custody statutes, and added provisions, for example, for the courts to determine the existence of special circumstances before entering parental decision-making and parenting time orders. SL/CP has been reviewing and modifying AHCW's draft with input and feedback from many stakeholders with different viewpoints on presumption issues and special circumstances.

Mr. Wolfson expressed concerns about how the final product would be viewed at the legislative level given the scope of changes and controversial topics and whether it would be proposed as a whole, in chunks, or at all. A comment was made about possible delays it would create once in place. A member commented about the implication it makes of judges' performance. Mr. Wolfson reported that the State Bar's Family Law Section had just begun the review process and that final versions of the product had recently been sent to all presiding judges for review. He encouraged COSC members to provide input and feedback based on their unique judicial perspective in anticipation of DRC's June 3, 2011, meeting, in which SL/CP will unveil their work in progress and also request additional time to obtain feedback from the public and experts. Any comments to take back to DRC may be directed to Mr. Wolfson at steve.wolfson@mwmf.com, or to Kathy Sekardi at ksekardi@courts.az.gov. Meeting information and product update will be posted on the DRC and workgroup's websites.

C. Revisions to ACJA §§ 1-605: Requests for Bulk or Compiled Data and 1-606: Providing Case Record Access to Public Purpose Agencies and Public Purpose Organizations

Ms. Melinda Hardman, AOC policy analyst, presented proposed revisions to ACJA § 1-605: Requests for Bulk or Compiled Data, and ACJA § 1-606: Providing Case Record Access to Public Purpose Agencies and Public Purpose Organizations. Ms. Hardman explained how the process for data requests and data releases could be improved and clarified, especially as it relates to First Amendment issues encountered with media requests. Regarding § 1-605, Ms. Hardman differentiated between a request for bulk or compiled data that includes a request for "protected personal identifiers" such as a street address, last four digits of a social security and a driver's license number, and a request that does not. Ms. Hardman also acknowledged that there are different types of requestors of bulk or compiled data, and she clarified the concept of a subscription service for court data. She further reduced the number of provisions or terms required in a dissemination agreement when protected personal identifiers are not requested. With respect to § 1-606, Ms. Hardman clarified the persons and entities to whom the section applies and the types of requests to which it applies, including that it does not apply to persons or entities covered by § 1-605.

Mr. Peter Kozinets, attorney with Steptoe & Johnson, described how the new code sections affected his client, *the Arizona Republic*, in its dealings with the court. The proposed revisions are supported by Mr. Kozinets and *the Arizona Republic*.

Ms. Hardman indicated that the proposed revisions are posted on the AJC Forum but have not been presented yet to the Committee on Technology or to the Clerk's Association. Clerks of the Court expressed concerns about the proposed revisions since it was the first time they had seen these changes, and they refrained from support until they discussed with other clerks. A member commented on the difficulties of making requests for everyone else when it is difficult for a newspaper.

MOTION: To approve the proposed changes to ACJA §§ 1-605 and 1-606 as presented. Motion seconded. Approved 10-6.
COSC-11-018

D. Supreme Court Rule 124

Ms. Melinda Hardman, AOC policy analyst, and Mr. Stewart Bruner, AOC manager of strategic planning, presented a progress update regarding the revisions to Supreme Court Rule 124; Electronic Filing, Delivery and Service of Documents (SCR 124). Mr. Bruner provided a brief recap of the rule and its purpose to coordinate with the new unified statewide E-filing system. The proposed changes to the revised petition have been reposted for a second comment period, which ends on June 6, 2011. Mr. Bruner noted that fee deferrals and waivers are not available when filing electronically, and legal service providers are exempt from AZTurboCourt because there is currently no way for AZTurboCourt to know when this is applicable.

Mr. Bruner also identified key changes in the proposed rule language. The first item regarded the format of electronic signatures ("/s/"). The second item clarified that "withdrawal of consent to electronic service" means only withdrawal of consent to be served through AZTurboCourt, not an outright waiver of service required by rule or law and that self-represented litigants may request that the clerk exempt them from all electronic communications issued by the clerk, even though they have previously e-filed. The third item was an added option that permits the courts to communicate "through AZTurboCourt or by other electronic means" to be consistent with AO 2009-43, Electronic Distribution of Court Documents. The fourth item revised the definition of original to indicate that an electronic document that resides within the clerk's or court's EDMS constitutes an original document of record. The fifth item was striking Courtroom Exhibits since it was not relevant. The sixth and more controversial item about extensions of time due to interruption in service reduced the number of requirements to only those specified in AO 2010-17.

During the COSC meeting, Hon. Patricia Noland, Clerk of Pima County, proposed a 24- or 48-hour deadline for the court to accept the filing because nothing prevents a party from waiting months before submitting again. Another member commented on the recent Yavapai County computer virus and recommended to specifically include language regarding interruption at the local or user level versus state level only. Mr. Bruner and Ms. Hardman reminded COSC

members that they are still seeking feedback, and the deadline to submit comments to the amended petition is June 6, 2011.

E. ACJA § 6-110: Offender Drug Testing

Mr. Cliff Ford and Mr. Mark Stodola, AOC Representatives of Adult Probation Services, presented proposed revisions to ACJA § 6-110: Offender Drug Testing, which would provide consistency for the probation departments in Arizona with regard to the alcohol and drug testing of offenders. A brief history underscored the need to update guidelines that were revised back in 1985. Over the last year, a new code section was developed to provide minimum standards and consistency to all probation departments when testing offenders for drugs and alcohol. Specifically, standards for specimen collection, chain of custody, and laboratory testing requirements were devised. Probation officers are happy with the proposal, and the Committee on Probation has approved the changes.

MOTION: To approve the proposed changes to ACJA § 6-110 as presented. Motion seconded. Approved unanimously.
COSC-11-019

F. Model Time Standards

Ms. Janet Johnson, AOC director, sought feedback from the committee regarding proposed model time standards for state courts, which are expected to be debated, and potentially adopted, during the Conference of State Court Administrators (COSCA) in July. Ms. Johnson provided a brief history and definition of time standards as a way to establish expectations for timely justice. However, public expectations for timeliness of court decisions is based on the current pace of business, as opposed to the current pace of the judicial system. The proposed time standards are intended to establish a reasonable set of expectations for the courts, for the lawyers, and for the public. Ms. Johnson anticipated that, depending on the input received and the outcome of COSCA discussion, the AOC would begin the process to consider adoption of any or all of the standards. She assured that while standards would be followed closely, they would be applied based on Arizona's culture.

Some members questioned the research protocols and parameters behind the standards. Some members observed that court cases are sometimes at the mercy of attorneys, and sometimes a resolution may need time to percolate. A few members were in agreement that a computer system was needed to monitor the standards and generate reports and that this system should be in place before agreeing on any standard. A question was raised about how cases involving a mental health commitment would be handled. One member opposed such standards because they give the impression that judges are incompetent. Comments should be forwarded to Ms. Johnson at jajohnson@courts.az.gov no later than June 13, 2011.

G. Parenting Time Guide

Judge Colleen McNally, co-chair of COSC's Parenting Plans Workgroup, reported that the parenting time guide, "Planning for Parenting Time," is now available in Spanish. The Arizona Court Interpreters Association volunteered to provide a Spanish translation of the guide, which

was released on March 28, 2011. Both versions are available for download on the Arizona Judicial Branch's website at <http://azcourts.gov/familylaw/ChildrenFamilyIssues.aspx>.

III. OTHER BUSINESS

A. Next Meeting Date

Friday, September 9, 2011

10:00 a.m. – 2:00 p.m.

Arizona State Courts Building

Conference Room 345 A/B

B. Good of the Order/Call to the Public

No public comments offered. Adjourned at 11:54 a.m.